

AMENDED IN SENATE JANUARY 5, 2004

SENATE BILL

No. 559

Introduced by Senator Ortiz

February 20, 2003

An act to add Article 6.2 (commencing with Section 25367.1) to Chapter 6.8 of Division 20 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 559, as amended, Ortiz. ~~Brownfields~~ *Hazardous substances: brownfield* response unit.

The Carpenter-Presley-Tanner Hazardous Substance Account Act imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection and priority ranking of hazardous substance release sites for removal or remedial action under the act. The act requires the department or, if appropriate, a California regional water quality control board, to prepare or approve remedial action plans for each listed site.

Under existing law, the Site Designation Committee in the California Environmental Protection Agency is authorized to designate an administering agency for oversight of a remedial action to a hazardous substance release. Existing law requires the administering agency to supervise the site investigation and remedial action conducted by the responsible party and, upon determining that the site investigation and remedial action has been satisfactorily completed, to issue a certificate of completion to the responsible party.

This bill would enact the ~~Brownfields~~ *Brownfield* Response Unit Program Act and would require the ~~department~~ *Secretary for*

Environmental Protection to establish a ~~brownfields~~ *brownfield* response unit within the ~~department~~ *California Environmental Protection Agency*. The act would require the unit to meet specified requirements and to report only to the ~~Director of Toxic Substances Control~~ *secretary*. The bill would prohibit the ~~department~~ *Department of Toxic Substances Control and the State Water Resources Control Board* from requiring the unit's actions to be approved or reviewed by any other ~~unit or~~ division of the department *or board*.

The bill would authorize the unit to oversee a response action at a brownfield site pursuant to the act *only* upon the application of a local public entity, as defined, and would ~~authorize~~ *require* the unit to select a site for a response action under the act if the site meets the conditions of a brownfield, *as defined*. The bill would require the unit to follow specified procedures with regard to reviewing an application submitted by a local public entity for oversight of a response action under the act, including ~~holding an initial site conference with all potentially interested state and local agencies~~. The bill would ~~authorize any state or local agency to participate and provide input at the initial site conference and would prohibit a state or local agency that receives notice of the initial site conference and does not participate or provide input at the initial site conference from imposing any requirement regarding the response action at that brownfield site after the date of the initial site conference, except as specified~~ *notifying all potentially responsible parties and potentially interested state and local regulatory agencies that the unit has accepted oversight of the response action pursuant to the act. The bill would authorize those agencies to participate in a specified conferences regarding the brownfield site*. The bill would require the remedial site investigation workplan and the removal action workplan for the brownfield site to be submitted and approved in accordance with a specified schedule *and procedure*.

The bill would require the ~~responsible party or, if applicable, the local public entity, to request~~ the unit to issue a certificate of completion, as defined, *to the local public entity*, for a brownfield site when the response action to the site is *satisfactorily* completed in accordance with an approved removal action workplan. ~~The bill would authorize the unit to issue the certificate upon making a specified finding, and the unit makes a specified finding.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1.—Article 6.2 (commencing with Section 25367.1)~~
SECTION 1. Article 6.2 (commencing with Section 25367.1)
is added to Chapter 6.8 of Division 20 of the Health and Safety
Code, to read:

Article 6.2. Brownfield Response Unit Program Act

25367.1. (a) This article shall be known, and may be cited, as
the Brownfield Response Unit Program Act.

(b) The Legislature finds and declares all of the following:

(1) Rapid cleanup and redevelopment of brownfields is a
priority of the state and the agency.

(2) Local public entities play an increasingly more active and
important role in the cleanup and redevelopment of brownfields.
However, cleanup and redevelopment of brownfields by local
public entities is delayed or fails when local public entities do not
receive timely, appropriate review and consideration of cleanup
plans and actions by state or local regulatory agencies,
particularly at the initial phases of brownfield site cleanup.

(3) Under current practices, each department and board within
the agency, as well as other state and local regulatory agencies,
has overlapping authority to review and approve or disapprove
cleanup plans submitted to the agency by local public entities at
any time before, during, or after cleanup of a brownfield site. Since
the agency does not have an administrative process for
coordinating this review, a department or board of the agency, or
other state or local regulatory agency may, and often does, review
a cleanup plan or cleanup action long after the local public entity
has received approval from a different department or board of the
agency, or other state or local regulatory agency, that has already
accepted oversight responsibility, and long after the local public
entity has expended considerable public funds toward cleanup in
accordance with the cleanup plan that was initially approved. That
late review often results in different and additional cleanup
requirements.

(4) The lack of effective, efficient, predictable regulatory
procedures for review of cleanup plans for the state's brownfields
greatly increases local public entities' costs to clean up brownfield

1 sites. Those increased costs have the deleterious effect of causing
2 local public entities to delay, and in some cases abandon, cleanup
3 and redevelopment of brownfield sites.

4 (5) Programs including the California Expedited Remedial
5 Action Reform Act of 1994 (Chapter 6.85 (commencing with
6 Section 25396)) and unified agency review of hazardous materials
7 release sites under Chapter 6.65 (commencing with Section
8 25260), have in large part been initiated to address this problem.
9 However, these programs are available only on brownfield sites
10 that have been voluntarily placed in those programs by responsible
11 parties. Local public entities often do not purchase brownfield
12 sites that they are compelling a responsible party to cleanup, and,
13 therefore, cannot utilize these programs.

14 (c) It is the intent of the Legislature, in enacting this article, to
15 do all of the following:

16 (1) Establish a coordinated, efficient, expeditious process that
17 is clear, predictable, and time-sensitive, by which local public
18 entities, or responsible parties who are compelled by a local public
19 entity to clean up a brownfield site, may obtain effective, efficient,
20 predictable regulatory review of local public entities' plans and
21 actions to cleanup the state's brownfields.

22 (2) Establish a dedicated brownfield response unit within the
23 agency to coordinate that review.

24 (3) Provide the dedicated brownfield response unit with
25 exclusive authority to review and approve plans and actions to
26 cleanup the state's brownfields that are submitted by local public
27 entities.

28 25367.2. Unless the context dictates otherwise, the following
29 definitions govern the construction of this article.

30 (a) "Board" means the State Water Resources Control Board
31 and any subdivision thereof.

32 (b) (1) "Brownfield" or "brownfield site" means real
33 property, the expansion, redevelopment, or reuse of which may be
34 complicated or inhibited by the presence or perceived presence of
35 a hazardous substances as defined in subdivision (h) of Section
36 25281.

37 (2) "Brownfield" or "brownfield site" does not include any of
38 the following:

1 (A) Property listed, or proposed for listing, on the National
2 Priorities List established under Section 105 of the federal act (42
3 U.S.C. Sec. 9605(a)(8)(B)).

4 (B) A property listed by the department pursuant to Section
5 25356.

6 (c) “Certificate of completion” means a determination that the
7 responsible party, if any, and the local public entity have complied
8 with the requirements of all state and local laws, ordinances,
9 regulations, and standards that are applicable to the site
10 investigation and response action for which the certificate is
11 issued. A certificate of completion issued pursuant to this article
12 shall confer the same immunity as, and shall be conditioned on the
13 same requirements as, a certificate of completion issued pursuant
14 to subdivision (c) of Section 25264, except that, for purposes of this
15 article, the unit shall be deemed the administering agency.

16 (d) “Cleanup action” or “cleanup plan” means all plans, and
17 all actions taken pursuant thereto, by a local public entity, its
18 officers, employees, or agents, to cleanup the brownfield site,
19 including, but not limited to, site investigation, site
20 characterization, remediation, and removal.

21 (e) “Local public entity” means a city, county, city and county,
22 redevelopment agency as defined in Section 33003, or any
23 political subdivision of the state.

24 (f) “Regulatory agency” means the state regulatory agency
25 that is a department, board, unit, or other subdivision of the
26 agency, or other state agency, including, but not limited to, the
27 Department of Fish and Game, or certified unified program
28 agency as defined in paragraph (1) of subdivision (a) of Section
29 25404.

30 (g) “Respond,” “response,” or “response action” means a
31 removal action and remedial action, including, but not limited to,
32 site characterization, the preparation and implementation of site
33 remedial investigation workplans and removal action workplans,
34 and implementation of operation and maintenance measures.

35 (h) “Responsible party” includes all of the following:

36 (1) A responsible party or liable person, as defined in Section
37 25323.5.

38 (2) A person subject to a cleanup or abatement order issued
39 pursuant to Section 13304 of the Water Code.

1 (i) “Secretary” means the Secretary for Environmental
2 Protection.

3 (j) “Unit” or “brownfield response unit” means the brownfield
4 response unit established by the secretary pursuant to Section
5 25367.3.

6 25367.3. (a) The secretary shall establish a brownfield
7 response unit within the agency. The secretary, or his or her
8 designee, shall assign appropriate staff to the unit. The unit shall
9 include employees from the department, the board, and California
10 regional water quality control boards, who include a project
11 manager, an attorney, a toxicologist, a geologist, and a
12 hydrogeologist. The unit may include other employees or agents
13 deemed necessary by the secretary, or his or her designee, for
14 implementation of this article.

15 (b) (1) The Brownfields Revitalization and Environmental
16 Restoration Act of 2001 amended the federal act to promote the
17 cleanup and reuse of brownfields, to provide financial assistance
18 for brownfield revitalization, and to enhance state response
19 programs.

20 (2) The unit may allocate and expend funds received from a
21 United States Environmental Protection Agency award of state
22 response program grant funds to defray administrative costs
23 associated with establishing and maintaining the unit that may be
24 needed over and above unit costs paid for by oversight agreements,
25 as long as the use of those grant funds is consistent with the grant’s
26 requirements.

27 (c) The unit shall be available on a statewide basis and shall
28 meet all of the following requirements:

29 (1) All unit staff shall be familiar with, and trained as necessary
30 in, the implementation of, all state programs relating to
31 brownfields, including, but not limited to, the Polanco
32 Redevelopment Act (Article 12.5 (commencing with Section
33 33459) of Chapter 4 of Part 1 of Division 24) and the California
34 Expedited Remedial Action Reform Act of 1994 (Chapter 6.85
35 (commencing with Section 25396)).

36 (2) All unit staff shall be familiar with, and trained as necessary
37 in, the use of agreements, such as covenants not to sue and
38 prospective purchaser agreements, and shall follow all regulations
39 and guidelines adopted for the implementation of this article.

1 (3) *In order to expedite the operation of the policies set forth in*
2 *this article, the unit shall report only to the secretary, or his or her*
3 *designee. The department and the board may not require the unit's*
4 *actions, with regard to oversight of a response action pursuant to*
5 *this article, to be approved or reviewed by any other division of the*
6 *department or board.*

7 (d) *The unit shall adopt regulations to implement this article*
8 *and promote the redevelopment of brownfield sites.*

9 25367.4. (a) *The unit shall serve as the oversight agency for*
10 *purposes of all response actions taken pursuant to this article.*

11 (b) *The unit shall oversee a response action at a brownfield site*
12 *pursuant to this article only upon the application of a local public*
13 *entity pursuant to Section 25367.5.*

14 (c) *Upon receipt of an application by a local public entity, the*
15 *unit shall review response action plans and oversee approved*
16 *response actions if the site meets the conditions of a brownfield as*
17 *defined in Section 25367.2.*

18 (d) (1) *The unit may not oversee a response action pursuant to*
19 *this article if the brownfield site is currently operating as, or is*
20 *proposed to be developed as, a school, general acute care hospital,*
21 *long-term health care facility, or child day care facility.*

22 (2) *For purposes of this subdivision, "general acute care*
23 *hospital" has the meaning provided by subdivision (a) of Section*
24 *1250, "long-term health care facility" has the meaning provided*
25 *by subdivision (a) of Section 1418, and "child day care facility"*
26 *has the meaning provided by Section 1596.750. "School" means*
27 *any school used for the purpose of the education of more than 12*
28 *children in kindergarten or any of grades 1 to 12, inclusive.*

29 (e) *The unit shall meet with the local public entity as required*
30 *by this article. At all required meetings, the unit shall have present*
31 *necessary personnel and agents, including, but not limited to, a*
32 *project manager, an attorney, a toxicologist, a geologist, and a*
33 *hydrogeologist. Nothing in this article limits or prevents the unit*
34 *and the local public entity from meeting, upon mutual agreement,*
35 *more often than required by this article.*

36 25367.5. (a) (1) *A local public entity, in its sole discretion,*
37 *may apply to the unit in writing pursuant to this article for the*
38 *oversight of a response action to a brownfield site that is located in*
39 *the jurisdiction of the local public entity.*

(2) An application may be on a form created by the unit or may be any writing submitted by the local public entity that meets the requirements of this section. The written application may contain any information related to the brownfield site, not otherwise protected by law. The written application shall contain a description of the brownfield site, current commonly known address, if any, preliminary title report, and all environmental information concerning the site reasonably available up to the time the application is submitted, including, but not limited to, a Phase I environmental assessment completed in accordance with standards set by the American Society of Testing and Materials.

(b) (1) The unit may not require a local public entity applying for response action oversight pursuant to this article to own the property that is the subject of the application.

(2) The unit may not require, as a condition of applying for oversight pursuant to this article, that the local public entity that is compelling a responsible party pursuant to the Polanco Redevelopment Act (Article 12.5 (commencing with Section 33459) of Chapter 4 of Part 1 of Division 24) agree to carry out or assume responsibility for, any response action deemed necessary by the unit at the brownfield site.

(3) A local public entity applying for oversight pursuant to this article shall assist in the implementation of this article and enter into a negotiated agreement to pay oversight costs if the responsible party does not.

(c) On or before 30 days after the receipt of a written application completed by a local public entity pursuant to subdivision (a), the unit shall inform the local public entity in writing of the unit's acceptance or denial of the application for oversight, based on criteria stated in this article. Written notice of acceptance shall include the date, time, and place of an initial conference, to meet with the local public entity pursuant to subdivision (d). Acceptance of an application may not be denied unreasonably. Written denial of an application shall include reasons for the denial.

(d) On or before 30 days after notifying the local public entity that the unit has accepted oversight of a brownfield site under this article, the unit shall hold an initial conference at which it shall meet with the local public entity to determine the identity of all potentially responsible parties, potentially interested state and

1 *local regulatory agencies, the environmental conditions at the*
2 *brownfield site, a preliminary scope of work based upon available*
3 *data, for addressing the environmental conditions at the*
4 *brownfield site, and the date, time, and place of a second*
5 *conference to be held pursuant to subdivision (f).*

6 *(e) On or before 30 days after the initial conference, the unit*
7 *shall notify all other potentially responsible parties and*
8 *potentially interested state and local regulatory agencies in*
9 *writing by certified mail that the unit has accepted oversight of the*
10 *response action pursuant to this article, provide them with a*
11 *description of the brownfield site, and give them notice of the date,*
12 *time, and location of the second conference.*

13 *(f) On or before 90 days after the initial conference, the unit*
14 *shall hold a second conference with the local public entity, any*
15 *potentially responsible parties who attend, and any other*
16 *interested state and local regulatory agencies, for appropriate*
17 *review of all information submitted to the unit to date. The unit*
18 *shall determine the requirements for the local public entity to*
19 *complete an environmental site assessment, the preparation of an*
20 *environmental site investigation report to determine the nature*
21 *and extent of suspected releases of hazardous substances and the*
22 *presence of other contaminants and pollutants, and the*
23 *requirements for carrying out other response or cleanup activities,*
24 *including requirements for public notification and public*
25 *participation. Any state or local regulatory agency, or any local*
26 *public entity, may participate and provide input for information*
27 *purposes only at the conference, with regard to any issue*
28 *pertaining to the investigation of the brownfield site that may*
29 *reasonably be anticipated.*

30 *(g) The site remedial investigation workplan and the removal*
31 *action workplan for a brownfield site subject to this article shall*
32 *be submitted by the local public entity and approved in accordance*
33 *with the following schedule:*

34 *(1) On or before 60 days after the local public entity submits a*
35 *draft site remedial investigation workplan to the unit for review,*
36 *and to other state or local regulatory agencies present at the*
37 *second conference for review and comment, the unit shall hold a*
38 *third conference with the local public entity and other identified*
39 *state or local regulatory agencies, to provide comment and*
40 *recommendations for final approval of the draft site remedial*

1 investigation workplan. The local public entity may resubmit a
2 revised draft site remedial investigation workplan based on
3 comments and recommendations made at the third conference.

4 (2) On or before 60 days after holding the third conference with
5 the local public entity, or on or before 60 days after receipt of a
6 revised draft site remedial investigation workplan, if any,
7 submitted by the local public entity, the unit shall notify the local
8 public entity of its decision to approve or deny the draft site
9 remedial investigation workplan. Approval of the workplan may
10 not be denied unreasonably. Denial of the workplan shall be in
11 writing, state the reasons for denial, and notify the local public
12 entity of all modifications needed to obtain approval of the draft
13 site remedial investigation workplan.

14 (3) The local public entity may resubmit a draft site remedial
15 investigation workplan that has been denied pursuant to
16 paragraph (2) until it is approved.

17 (4) Upon approval of a site remedial investigation workplan,
18 the local public entity shall complete remedial investigation in
19 accordance with the approved workplan.

20 (5) Upon completion of the site investigation pursuant to the
21 approved site remedial investigation workplan, the local public
22 entity shall submit a draft removal action workplan to the unit to
23 review and approve. A copy of the draft removal action workplan
24 shall be provided concurrently by the local public entity to other
25 identified state and local regulatory agencies for review and
26 comment.

27 (6) On or before 60 days after the draft removal action
28 workplan is submitted, the unit shall hold a fourth conference with
29 the local public entity, and any other identified state and local
30 regulatory agencies, to provide comments and recommendations
31 for final approval of the draft removal action workplan. The local
32 public entity may resubmit a revised draft remedial action
33 workplan based on comments and recommendations made at the
34 fourth conference.

35 (7) On or before 60 days after the fourth conference, or on or
36 before 60 days after receipt of a revised draft removal action
37 workplan, if any, resubmitted by the local public entity, the unit
38 shall notify the local public entity in writing of its decision to
39 approve or deny the draft removal action workplan. Approval may
40 not be denied unreasonably. Denial of the workplan shall be in

1 writing, state the reasons for denial, and notify the local public
2 entity of all modifications needed to obtain approval of the draft
3 removal action workplan.

4 (8) The local public entity may resubmit a draft removal action
5 workplan that has been denied pursuant to paragraph (7) until it
6 is approved.

7 25367.6. (a) Upon satisfactory completion of a response
8 action to a brownfield site, pursuant to a removal action workplan
9 approved in accordance with Section 25367.5, and upon a finding
10 made pursuant to subdivision (b), the unit shall issue a certificate
11 of completion to the local public entity for that brownfield site.

12 (b) The unit may issue a certificate of completion only if the unit
13 makes a finding that the brownfield site has been placed into a
14 condition that allows it to be used permanently for its planned use
15 without any significant risk to human health or potential for any
16 future significant environmental damage.

17 25367.7. (a) This article does not provide a private right of
18 action.

19 (b) A local public entity's application for oversight of a
20 response action pursuant to this article is a discretionary action
21 and does not constitute an admission of liability by the local public
22 entity for the environmental conditions of the brownfield site that
23 is the subject of the application.

24 25367.8. Except as otherwise specifically provided, nothing
25 in this article affects the authority of the agency, or any subdivision
26 or agent thereof, to issue orders or take other action under any
27 provision of law to protect public health and safety or the
28 environment. ~~is added to Chapter 6.8 of Division 20 of the Health~~
29 ~~and Safety Code, to read:~~

30
31 ~~Article 6.2.—Brownfields Response Unit Program Act~~
32

33 ~~25367.1.—(a) This article shall be known, and may be cited, as~~
34 ~~the Brownfields Response Unit Program Act.~~

35 ~~(b) The Legislature finds and declares all of the following:~~

36 ~~(1) There are a number of publicly owned infill properties that~~
37 ~~are vacant or underutilized throughout the state and are commonly~~
38 ~~known as “brownfields.” These brownfield properties once~~
39 ~~contained industrial uses that left behind soil or groundwater~~
40 ~~contaminants after they ceased operation.~~

~~(2) Cities and redevelopment agencies often purchase, clear, and assemble these brownfields properties as part of downtown redevelopment efforts. However, redevelopment is delayed or fails when the public entities cannot obtain final approval from state regulatory agencies on necessary remediation actions.~~

~~(3) Many local public entities have been frustrated by the current process that results in unexpected and last minute directives from regulatory agencies that review a remediation process long after the initial plan is first approved by the lead agency. Programs such as the California Expedited Remedial Action Reform Act of 1994 (Chapter 6.85 (commencing with Section 25396)) and unified agency review of hazardous materials release sites under Chapter 6.65 (commencing with Section 25260) have been initiated to address this problem, but these programs are available only on brownfield sites that have been voluntarily placed in those programs by responsible parties.~~

~~(e) It is the intent of the Legislature, in enacting this article, to do all of the following:~~

~~(1) Close the gap between the stated mission and goals of the United States Environmental Protection Agency and the California Environmental Protection Agency that encourage the revitalization of urban brownfields, and the existing regulatory processes that prevent these goals from being achieved.~~

~~(2) Establish procedures that are clear, predictable, and time-sensitive to ensure efficient resolution of contamination issues.~~

~~(3) Set up a dedicated brownfields response unit to oversee a process to expedite the effective cleanup of minimally or moderately contaminated properties, and aid in the revitalization of the state's inner cities.~~

~~(4) Streamline the cleanup process at selected brownfields sites by instituting a thorough analysis, with all appropriate regulating agencies, at the initiation of the process in a manner similar to that authorized by the California Expedited Remedial Action Reform Act of 1994 (Chapter 6.85 (commencing with Section 25396)) and the unified agency review of hazardous materials release sites under Chapter 6.65 (commencing with Section 25260).~~

~~25367.2. Unless the context dictates otherwise, the following definitions govern the construction of this chapter:~~

1 ~~(a) “Brownfield” or “brownfield site” has the same meaning~~
2 ~~as “brownfield” as defined in paragraph (2) of subdivision (a) of~~
3 ~~Section 25395.20.~~

4 ~~(b) “Certificate of completion” means a determination that the~~
5 ~~responsible party, if any, and the local public entity have complied~~
6 ~~with the requirements of all state and local laws, ordinances,~~
7 ~~regulations, and standards that are applicable to the site~~
8 ~~investigation and response action for which the certificate is~~
9 ~~issued. A certificate of completion issued pursuant to this article~~
10 ~~shall confer the same immunity as, and shall be conditioned on, the~~
11 ~~same requirements as a certificate of completion issued pursuant~~
12 ~~to subdivision (c) of Section 25264, except that, for purposes of~~
13 ~~this article, the department shall be deemed the administering~~
14 ~~agency.~~

15 ~~(c) “Lead agency” means the state agency that has the~~
16 ~~principal responsibility for carrying out or approving any action~~
17 ~~taken pursuant to this article.~~

18 ~~(d) “Local public entity” means a city, county, or district, or a~~
19 ~~redevelopment agency as defined in Section 33003.~~

20 ~~(e) “Respond,” “response,” or “response action” means a~~
21 ~~removal action and remedial action, including, but not limited to,~~
22 ~~site characterization, the preparation and implementation of site~~
23 ~~remedial investigation workplans and removal action workplans,~~
24 ~~and implementation of operation and maintenance measures.~~

25 ~~(f) “Responsible party” includes all of the following:~~

26 ~~(1) A responsible party or liable person, as defined in Section~~
27 ~~25323.5.~~

28 ~~(2) Any person subject to a cleanup or abatement order issued~~
29 ~~pursuant to Section 13304 of the Water Code.~~

30 ~~(g) “Unit” means the brownfield response unit established by~~
31 ~~the department pursuant to Section 25367.3.~~

32 ~~25367.3.—(a) The department shall establish a brownfield~~
33 ~~response unit within the department, which shall consist of staff~~
34 ~~that is solely assigned to overseeing response actions to~~
35 ~~brownfields pursuant to this article. The unit shall include a project~~
36 ~~manager, an attorney, a toxicologist, a geologist, a hydrogeologist,~~
37 ~~and any other staff deemed necessary by the department for the~~
38 ~~implementation of this article.~~

39 ~~(b) The unit shall be available on a statewide basis and shall~~
40 ~~meet all of the following requirements:~~

~~(1) All unit staff shall be familiar with, and trained as necessary in the implementation of, all state programs relating to brownfields, including but not limited to, the Polanco Redevelopment Act (Article 12.5 (commencing with Section 33459) of Chapter 4 of Part 1 of Division 24) and the California Expedited Remedial Action Reform Act of 1994 (Chapter 6.85 (commencing with Section 25396)).~~

~~(2) All unit staff shall be trained in the use of agreements, such as covenants not to sue and prospective purchaser agreements, and shall follow the regulations and guidelines adopted for the implementation of this article.~~

~~(3) In order to expedite the operation of the policies set forth in this article, the unit shall report only to the director, and the department may not require the unit's actions, with regard to oversight of a response action pursuant to this article, to be approved or reviewed by any other unit or division of the department.~~

~~(e) The department shall adopt regulations to implement this article and promote the redevelopment of brownfield sites.~~

~~25367.4. (a) The department shall serve as the lead agency for implementing this article and, through the unit, shall act as the oversight agency for purposes of all response actions taken pursuant to this article.~~

~~(b) The unit may oversee a response action at a brownfield site pursuant to this article only upon the application of a local public entity pursuant to Section 25367.5.~~

~~(c) The unit may select a site for a response action under this article if the site meets the conditions of a brownfield, as provided in paragraph (2) of subdivision (a) of Section 25395.20 or as determined by the unit at the time the application is filed with the unit.~~

~~(d) (1) The unit may not oversee a response action pursuant to this article if the brownfield site is currently operating as, or proposed to be developed as, a school, general acute care hospital, long term health care facility, or child day care facility.~~

~~(2) For purposes of this subdivision, "general acute care hospital" has the meaning provided by subdivision (a) of Section 1250, "long term health care facility" has the meaning provided by subdivision (a) of Section 1418, and "child day care facility" has the meaning provided by Section 1596.750. "School" means~~

1 any school used for the purpose of the education of more than 12
2 children in kindergarten or any of grades 1 to 12, inclusive.

3 ~~(e) The unit shall not oversee more than 30 brownfields~~
4 ~~pursuant to this article statewide at any given time. The unit shall~~
5 ~~develop and make available a waiting list that prioritizes the~~
6 ~~selection of brownfields in excess of that number for which a local~~
7 ~~public entity has applied for oversight under this article.~~

8 ~~25367.5.— (a) A local public entity may, in its sole discretion,~~
9 ~~apply to the unit pursuant to this article for the oversight of a~~
10 ~~response action to a brownfield site that is located in the~~
11 ~~jurisdiction of the local public entity~~

12 ~~(b) (1) The unit may not require, as a condition of applying for~~
13 ~~the response action oversight pursuant to this article, that the local~~
14 ~~public entity agree to carry out and assume responsibility for any~~
15 ~~response actions deemed necessary by the unit at the site.~~

16 ~~(2) The unit may not require a local public entity applying for~~
17 ~~response action oversight pursuant to this article to own the~~
18 ~~property that is the subject of the application.~~

19 ~~(3) The unit shall require a local public entity applying for~~
20 ~~response action oversight pursuant to this article to commit to~~
21 ~~assist in the implementation of this article and to recover~~
22 ~~reimbursement for the response costs from any responsible party,~~
23 ~~as authorized by this chapter.~~

24 ~~(c) On or before 30 days after the receipt of an application by~~
25 ~~a local public entity for oversight of a response action pursuant to~~
26 ~~this article, the unit shall do both of the following:~~

27 ~~(1) Meet with representatives of the local public entity to~~
28 ~~determine the identity of all potentially responsible parties for the~~
29 ~~brownfield, the environmental conditions at the brownfield, and~~
30 ~~a preliminary scope of work based upon available data for~~
31 ~~addressing the environmental conditions at the brownfield site.~~

32 ~~(2) Contact all other potentially interested state and local public~~
33 ~~agencies for the purpose of informing them that a response action~~
34 ~~has been initiated and an initial site conference will be scheduled.~~

35 ~~(d) (1) On or before 90 days after the unit selects a brownfield~~
36 ~~for oversight pursuant to this article, the unit shall hold an initial~~
37 ~~site conference with all potentially interested state and local~~
38 ~~agencies. Any state or local agency may participate and provide~~
39 ~~input at the site conference with regard to any issue pertaining to~~
40 ~~the investigation of that site that may reasonably be anticipated.~~

~~(2) Notwithstanding any other provision of law, if a state or local agency receives notice of an initial site conference and does not participate or provide input at the initial site conference held pursuant to paragraph (1), the state or local agency may not impose any requirement regarding the response action at that brownfield site after the date of the initial site conference unless the state or local agency demonstrates to the unit, and the unit determines, that there is good cause for imposing that requirement.~~

~~(e) (1) Except as provided in paragraph (2), on or before 30 days following the initial site conference held pursuant to subdivision (d), the unit shall notify in writing, via certified mail, all identified potentially responsible parties and potentially interested state and local agencies of the unit's intent to oversee a response action of a brownfield site pursuant to this article, a description of the property, and the date, time, and location of second initial site conference. The unit shall conduct the second initial site conference that shall include all potentially responsible parties, potentially interested state and local agencies, representatives of the local public entity, and representatives of the unit. The second initial site conference shall address all of the following requirements:~~

~~(A) The requirements for the completion of a site investigation and the preparation of a site investigation report to determine the nature and extent of suspected releases of hazardous substances at the site.~~

~~(B) The requirements for carrying out response activities, including requirements for public notification and public participation.~~

~~(2) If no responsible parties have been identified with regard to the brownfield site, the notice requirements of paragraph (1) do not apply, but the unit shall otherwise conduct the second initial site conference specified in paragraph (1).~~

~~(c) The remedial site investigation workplan and the removal action workplan for a brownfield site subject to the article shall be submitted and approved in accordance with the following schedule:~~

~~(1) On or before 60 days after the unit completes the second initial site conference specified in subdivision (d), the responsible party, or if determined by the unit, the local public entity, shall~~

1 ~~submit a draft site remedial investigation workplan to the unit for~~
2 ~~review.~~

3 ~~(2) If the draft site remedial workplan is prepared by anyone~~
4 ~~other than the local public entity, a copy of the draft site remedial~~
5 ~~investigation workplan shall concurrently be provided to the local~~
6 ~~public entity and any other interested public agency for review and~~
7 ~~comment.~~

8 ~~(3) On or before 30 days after receiving the draft site remedial~~
9 ~~investigation workplan, the unit, representatives of the local public~~
10 ~~entity, and any other interested public agency shall meet and confer~~
11 ~~as necessary to provide comment and recommendations for final~~
12 ~~approval of the draft site remedial investigation workplan.~~

13 ~~(4) On or before 60 days after receiving the draft site remedial~~
14 ~~investigation workplan, the unit shall notify the party submitting~~
15 ~~the workplan of the unit's approval of the plan or any required~~
16 ~~modifications, and shall specify a timeframe for completion of the~~
17 ~~site investigation pursuant to the approved remedial investigation~~
18 ~~action workplan.~~

19 ~~(5) On or before 45 days after the site investigation is complete~~
20 ~~pursuant to the approved remedial investigation workplan, the~~
21 ~~responsible party, or if determined by the unit, the local public~~
22 ~~entity, shall submit a draft removal action workplan to the unit for~~
23 ~~review.~~

24 ~~(6) If the draft removal action workplan is prepared by anyone~~
25 ~~other than the local public entity, a copy of the draft removal action~~
26 ~~workplan shall concurrently be provided to the local public entity~~
27 ~~and any other interested public agency for review and comment.~~

28 ~~(7) On or before 30 days after receiving the draft removal~~
29 ~~action workplan, the unit, representatives of the local public entity,~~
30 ~~and any other interested public agency shall meet and confer as~~
31 ~~necessary to provide comments and recommendations for final~~
32 ~~approval of the draft removal action workplan.~~

33 ~~(8) On or before 60 days after receiving the draft removal~~
34 ~~action workplan, the unit shall notify the party submitting the~~
35 ~~workplan of the unit's approval of the plan or any required~~
36 ~~modifications, and shall specify a timeframe for completion of the~~
37 ~~response action pursuant to the approved removal action~~
38 ~~workplan.~~

39 ~~25367.6.—(a) Upon completion of a response action to a~~
40 ~~brownfield site pursuant to a removal action workplan approved~~

1 ~~pursuant to Section 25367.5, the responsible party, or, if~~
2 ~~applicable, the local public entity, shall request the unit to issue a~~
3 ~~certificate of completion for that brownfield site.~~

4 ~~(b) The unit may issue a certificate of completion only if the~~
5 ~~unit makes a finding that the brownfield site has been placed into~~
6 ~~a condition that allows it to be permanently used for its planned use~~
7 ~~without any significant risk to human health or potential for any~~
8 ~~future significant environmental damage.~~

9 ~~25367.7. (a) This article may not be interpreted as providing~~
10 ~~a private right of action.~~

11 ~~(b) A local public entity's application for oversight of a~~
12 ~~response action pursuant to this article is a discretionary action and~~
13 ~~does not constitute an admission of liability by the local public~~
14 ~~entity for the environmental conditions of the brownfield site that~~
15 ~~is the subject of the application.~~

